REMARKS

Claims 1-16 are pending in the application. The Office action asserts the claims do not meet the requirements of patentability under 35 U.S.C. §103(a) as being unpatentable over Civanlar et al. (EP 0 884 873, "Civanlar") in view of Razavi et al. (WO 00/77620, "Razavi"). Applicants traverse this contention and request reconsideration.

Claims 13-16 have been amended to correct dependency. These amendments are not narrowing, are not made for any reasons related to patentability, but are made simply to correct erroneously specified dependency. No negative inference with respect to the scope of equivalents or the application of prosecution history estoppel may be drawn from these amendments.

In the instant Office action, it is again asserted that the combination of Civanlar in view of Razavi renders unpatentable the pending claims. The applicants responded to the October 22, 2003 Office action rejecting the pending claims for this very reason by providing evidence and argument supporting their contention that what has been claimed is a vehicle incorporating an active network wherein the active network includes core and peripheral portions. The applicants' response carefully distinguished the claimed active network structure from other data communication and network structures heretofore used in vehicles. Since both Civanlar and Razavi fail to teach or suggest an active network structure, either alone or in association with a vehicle, the combination cannot render the claims unpatentable for the following reasons.

To establish a prima facie case of obviousness, and hence to find claims 1-16 unpatentable under 35 U.S.C. § 103(a), three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not be based upon applicant's disclosure. MPEP at § 2142.

The mere fact that references can be modified is not sufficient to establish prima facie case of obviousness. *See* Section 2143.01 of the M.P.E.P., which states: "The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990)." The suggestion to combine references must be from the prior art, not the Applicants' disclosure. *See* Section 2143 of the M.P.E.P. (emphasis added), which states: "The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)."

The proffered combination of Civanlar in view of Razavi fails to meet at least two to the criteria for establishing a prima facie case of obviousness.

There is no suggestion or motivation in the reference to combine them to achieve the applicants' claimed invention. Whether or not either of the references teach an active network architecture, the applicants assert and argue below neither does, does not matter because there simply is no suggestion or motivation in either Civanlar or Razavi to combine. In making such a rejection, it is the examiner that has the duty of supplying the requisite factual basis and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. See In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 177-78 (CCPA 1967); MPEP 2142.

Civanlar describes a packet date network structure. There is no teaching or suggestion whatsoever that the described network structures could be implemented in a vehicle. Thus, to establish a prima facie case of obviousness, the suggestion or motivation must come from Razavi. However, Razavi also fails to offer any such suggestion or motivation, and more likely teaches away from such a combination. Razavi addresses the problem within a vehicle of adapting new devices to the vehicle after it has been designed or placed into service. Razavi teaches an approach wherein each device is coupled to a vehicle network structure. Razavi does not suggest that a problem or need exists relating to being able to transfer data a higher speed within a core portion of the network than at a peripheral

portion of the network, nor could it offer any such suggestion. Razavi is addressed solely to the problem of implementing new devices. As noted, if anything, Razavi teaches away. In the discussion wherein a "in-car sub-network" structure is described, perhaps suggesting that the network architecture may have multiple components, this discussion is directed entirely to coupling the in-vehicle network to an external network such as the Internet. Thus, at best, Razavi teaches a multiple network component structure, i.e., the in-vehicle network coupled to the Internet, but such a structure is not the claimed active network with a core component and peripheral components. Razavi teaches away from such a structure opting instead for a combined, almost on a peer-to-peer basis of two independent network entities. For these reasons, one of ordinary skill in the art would not be motivated to combine Civanlar with Razavi in order to provide the claimed invention. As such, the examiner has failed to establish a prima facie case of obviousness, and claims 1-16 are allowable.

The combination of Civanlar et al. and Razavi et al. also fails to establish a prima facie case of obviousness because the proffered combination fails to teach or suggest each and every limitation of the claims. The claims set out, among other things, an active network, wherein the active network has a core portion and a peripheral portion. As established by the applicants in their response to the October 22, 2003 Office action, an active network is a network in which nodes perform custom operations on the messages that pass through the nodes. See Reinold Declaration, paragraph 8 attached therewith, see also Darpa publication "Active Networks" at www.darpa.mil/ato/programs/activenetwors/actnet.htm, copy attached as Appendix A. Thus, for Civanlar to teach an active network at least one of the IP relay routers for the "edge" of Civanlar's network or the IP relay switches forming the "core" of Civanlar's network must be active elements forming an active network. That is, these devices must allow messages to pass through while at the same time be capable of performing custom operations on the messages as they pass through. There is nothing in Civanlar to suggest such functionality attaches to these devices or that these devices operate in any manner other than as "passive" network devices forming a "passive" IP/packet network so carefully distinguished by applicants from the claimed invention. For example, Civanlar discusses the IP packets as having a label used by the ingress IPRR to route the packet to various portions of the relay network. (page 5, lines 32-40). The IPRR and the IPRS devices, however, only ever read

this label information to determine the next stop until the packet has reached its destination. This certainly is not "active" functionality including the performance of custom operations on the packets as they are communicated through the network. It is simple, passive routing. Thus, Civanlar fails to teach or suggest an active network structure as claimed.

According the MPEP § 2111.01:

"When not defined by applicant in the specification, the words of a claim must be given their plain meaning. In other words, they must be read as they would be interpreted by those of ordinary skill in the art."

Owing to the fact that applicant does not provide a special definition of the term "active network", such term must be given its plain meaning, i.e. it must be read as it would be interpreted by those of ordinary skill in the art. In any case, the broadest reasonable interpretation must to consistent with the specification and must also be consistent with the interpretation that those skilled in the art would reach. The interpretation of the term "active network" given by those of ordinary skill in the art is clear (see the aforementioned Affidavit and Darpa definition for reference): "an active network is a network including nodes capable of performing custom operations on the messages that pass through the nodes". Such interpretation is also consistent with the specification, which does not define what an active network is, but well define what an active network is not (i.e. an active network is not a passive network or BUS network of the type disclosed by Cinvalar and/or Razavi).

If we try to give to the term "active network" the aforementioned meaning, we consider an "active network" a network capable of doing something. In this light, it is clear that we are giving to the term "active network" a meaning that is not consistent with the interpretation that those skilled in the art would reach (see the aforementioned Affidavit and definition for reference). Furthermore, we are giving to the term "active network" a meaning that is not consistent with the specification: according to this meaning a BUS network is an active network, but in the specification it is clearly stated that a BUS network is not an active network. Both such considerations demonstrate without any doubt that the interpretation of the limitation "active network" as referring to any kind of network, passive, bus or otherwise, does not conform with the teaching of the MPEP and thus it is not appropriate.

Claim 1 positively recited an active network, which is a specific physical structure known to have particular characteristics, within a vehicle. This active network is not a bus architecture and is not a passive network or a combination of a passive network and a bus architecture or any other type of network structure than an active network structure. The combination of Cinvalar and Razavi does not disclose any active network and thus claim 1 cannot be rendered unpatentable thereby. Thus, for at least a second reason the combination of Civanlar and Razavi fails to establish a prima facie case of obviousness because the combination fails to teach each and every limitation of the claims.

For at least these reasons, the applicants submit claims 1-16 are allowable, and such action is respectfully requested.

If there are any additional fees or refunds required, the Commissioner is directed to charge or debit Deposit Account No. 13-2855.

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Respectfully submitted,
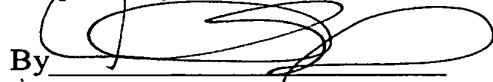
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